

200225



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, DC

Issued by the Department of Transportation on November 1, 2002

NOTICE OF ACTION TAKEN -- DOCKET OST-99-5749 - /7

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Application of Delta Air Lines, Inc. and Air Jamaica, Ltd. filed 10/18/2002 for:

~~XX~~ Exemption for one year from 49 U.S.C. § 41301 for Air Jamaica to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between Montego Bay and Kingston, Jamaica, on the one hand, and San Francisco, California, on the other hand. Air Jamaica intends to operate this service via Atlanta under a code-share arrangement with Delta.

~~XX~~ Amendment to Statement of Authorization in above-referenced docket under 14 CFR Part 212 for Delta to:

Display Air Jamaica's designator code on flights operated by Delta between Atlanta, Georgia, on the one hand, and San Francisco, California, on the other hand, on a blind-sector basis for carriage of Air Jamaica's Caribbean-U.S. traffic.

Applicant reps: Robert E. Cohn for Delta (202) 663-8060 and George U. Carneal for Air Jamaica (202) 637-6546  
DOT Analyst: Michael D. Bodman (202) 366-9667

DISPOSITION

~~XX~~ Granted, subject to conditions (see below).

The above action regarding Air Jamaica's exemption authority was effective when taken: November 1, 2002, through November 1, 2003.

The above action regarding Delta's statement of authorization was effective when taken: November 1, 2002, and will remain in effect, subject to the conditions described below.

Action taken by: Paul L. Gretch, Director  
Office of International Aviation

~~XX~~ The exemption authority granted to Air Jamaica is consistent with the overall state of aviation relations between the U.S. and Jamaica.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

~~XX~~ Holder's certificates of public convenience and necessity (Delta)

~~XX~~ Holder's foreign air carrier permit (Air Jamaica)

~~XX~~ Standard Exemption Conditions (attached)

~~XX~~ Statement of Authorization, as amended, for Delta/Air Jamaica code-share services dated **June 18, 1999**, in Docket OST-99-5749, and conditions therein.

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**Conditions:**

- (a) The statement of authorization will remain in effect only as long as (1) Delta and Air Jamaica continue to hold the necessary underlying authority to operate the code-share services at issue, and (2) the code-share agreement providing for the code-share operations remains in effect.’
- (b) Delta and/or Air Jamaica must promptly notify the Department (Office of International Aviation) if the code-share agreement providing for the code-share operations is no longer effective or the carriers decide to cease operating any or all of the approved code-share services.’
- (c) The code-sharing operations authorized herein must comply with **14 CFR** 257 and with any amendments to the Department’s regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere, and that the carrier selling such transportation (*i.e.* the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the passenger, and that the passenger liability of the operating carrier be unaffected.
- (d) The authority granted here is specifically conditioned so that neither Delta nor Air Jamaica shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

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**Remarks:** We acted on this application prior to the expiration date for answers with the consent of all parties served. On the basis of data officially noticeable, we found Air Jamaica qualified to provide the exemption services authorized.

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Under authority assigned by the Department in its regulations, **14 CFR** Part **385**, we found that (1) our action was consistent with Department policy; (2) grant of the authority was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department’s regulations, **14 CFR** § **385.30**, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this order is available on the World Wide Web at  
[http://dms.dot.gov/reports/reports\\_aviation.asp](http://dms.dot.gov/reports/reports_aviation.asp)*

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<sup>1</sup> We note that the code-share agreement as submitted did not include provisions regarding exclusive dealings between the code-share parties. Should the parties subsequently decide to amend their code-share agreement or any other agreement between them to include any provision relating to an exclusive arrangement between the parties regarding their code-share services, that amended language must first be submitted for consideration by the Department.

<sup>2</sup> We expect that this notification be received within ten (10) days of such non-effectiveness or of such decision.

## Appendix A

### FOREIGN AIR CARRIER CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36, and with all applicable U.S. Government requirements concerning security;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of **28** U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:

(a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or

(b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

(8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;

(9) Comply with the requirements **of** 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;

(10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and

(11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).

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<sup>1</sup> To assure compliance with all applicable U.S. Government requirements concerning security, the holder should, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, inform its Principal Security Inspector of its plans.

